IN THE HIGH COURT OF HIMACHAL PRADESH, SHIMLA

Cr.MP(M) No. 626 of 2007

Judgement reserved on:

Date of decision: 5.10.2007.

State of H.P. **…..Petitioner- Appellant.**

Vs.

Rakesh Kumar **…. Respondent.**

Coram

The Hon'ble Mr. Justice Kuldip Singh, Judge.

Whether approved for reporting?[1]

For the petitioner : Mr. M.L.Chauhan, Addl. Advocate General.

For the Respondent :

Kuldip Singh, Judge (Oral).

The State has filed the application for leave to file an appeal against the judgement of acquittal, dated 10.3.2006, passed by the learned Judicial Magistrate Ist Class, Court NO.2, Hamirpur in Police Challan No. 13-1-2000,RBT No. 508-II/2004.

2. The respondent was prosecuted, under Sections 354, 504 IPC on the allegations that on 26.3.2000 at about 8.30 p.m. at place Khatarwad, he outraged the modesty of PW 7 Parveen Kumari and insulted her to provoke breach of peace. On 27.3.2000, FIR Ex. PW 3/A was registered and after completion of inquiry, challan was put up against the respondent. The prosecution examined nine

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Whether the reporters of the local papers may be allowed to see the Judgment?

witnesses. The statement of the respondent was recorded, under Section 313 Cr.P.C., in which he pleaded his innocence and did not lead any defence evidence. The learned Judicial Magistrate acquitted the respondent, hence the State has filed the application for leave to file an appeal.

3. Heard learned Additional Advocate General and perused the record. PW 1 Brij Lal has stated that there was a quarrel between Parveen Kumari and Rakesh Kumar. Police took the respondent to the house of Parveen Kumari where her broken bangles were taken into possession by the police. PW 2 Smt. Jamuna Devi did not support the prosecution and was declared hostile. PW 3 Desh Raj is a witness of registration of FIR Ex. PW 3/A dated 27.3.2000. PW 5 Dr. S.N.Sharma after examining Parveen Kumari on 27.3.2000, issued MLC Ex. PW 5/A. PW 6 Jeet Singh has deposed that on hearing the cries of Parveen Kumari at 8.00 or 9.00 p.m. on 26.3.2000, he proceeded towards her house. Parkash Chand was there and Rakesh Kumar came out of the house of Parveen Kumari. They could not hold him and he ran away. Parveen Kumari told him that respondent pulled and quarreled with her in the upper storey of the house. The respondent pressed her breasts. PW 7 Parveen Kumari has stated that they have constructed their house adjacent to the house of the respondent about 6-7 years ago and their relations with the respondent are not cordial. On 26.3.2000, at 8.00 p.m. she was watching television in the upper storey of her house, respondent came there and misbehaved with her. He held her from her arms and pressed her breasts. She raised cries, Jeet Singh and Parkash

Chand came on the spot. The respondent came in her room and broke her bangles. PW 9 Shashi Pal ASI has stated that on 27.3.2000, he alongwith Ravinder Singh No. 78, were on patrolling at Khatarwad where complainant Parveen Kumari got recorded her statement Ex. PW 7/A, under Section 154 Cr.P.C.

4. It has come in evidence that Parkash Chand was on the spot but he has not been examined by the prosecution. PW 6 Jeet Singh is not an eye witness, his testimony is based upon what has been allegedly told by PW 7 Parveen Kumari to him. Therefore, his statement is based upon hear say. PW 2 Smt. Jamuna Devi was declared hostile. PW 7 Parveen Kumari has admitted that their relations with the respondent are not good. The alleged occurrence took place on 26.3.2000 at about 8.00 or 9.00 p.m. The statement, under Section 154 Cr.P.C. was got recorded on 27.3.2000. There is delay in registration of FIR which has not been explained. The complainant was medically examined on 27.3.2000 at 2.20 p.m. and PW 5 Dr. S.N.Sharma gave probable duration of injury within sixteen hours. Therefore, as per MLC Ex. PW 5/A, complainant PW 7 Parveen Kumari was injured at about 10.00 p.m. on 26.3.2000. This also contradicts the prosecution story. There is no corroboration of prosecution story by independent witness. The learned Judicial Magistrate has taken a possible view from the material on record. Hence, leave to file an appeal is refused.

October 5, 2007. **(Kuldip Singh)**
(*Hem*) **Judge.**